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**From:**

**Sent:** Monday, October 22, 2012 12:16:07 PM

**To:**

**Cc:**

**Subject:** RE: Guidance on Case

Look at the attached IRM cite 4.71.9.5.2 d that says: "Unlike a discrete act, the statutory period may expire for the act engaged in the first year, but the tax may be assessed for subsequent acts deemed to have occurred for which the statutory period has not expired." Thus, although the statute has expired for the taxable years through , you can still assess the tax on tax years that are opened, however, you cannot assess the section 4975 excise tax on the closed years.

This is also consistent with the attached Rev. Rul. 2002-43 in which the excise tax was different on a loan that was a continuing transaction. See the taxable years 1997 and 1998 in the revenue ruling.

If you want to talk you can call me at or at .

**ATTACHMENTS:** IRM 4.71.9; Rev. Rule 2002-43